



This document is scheduled to be published in the Federal Register on 06/09/2016 and available online at <http://federalregister.gov/a/2016-13302>, and on FDsys.gov

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1738

RIN 0572-AC06

Rural Broadband Access Loans and Loan Guarantees

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule; confirmation.

SUMMARY: The Rural Utilities Service (RUS), hereinafter referred to as the Agency, is confirming the interim final rule published in the *Federal Register* on July 30, 2015, which amends its regulation for the Rural Broadband Access Loan and Loan Guarantee Program (Broadband Loan Program).

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Keith Adams, Assistant

Administrator, Telecommunications Program, Rural Utilities Program, U.S. Department

of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 5151-S, Washington, DC 20250-1590. Telephone number: (202) 720-9554, Facsimile: (202) 720-0810.

SUPPLEMENTARY INFORMATION:

Since the inception of the Broadband Loan Program, the Agency has faced, and continues to face, significant challenges in delivering the program due to the following factors: (1) the significant number of applicants proposing to offer broadband service that are start-ups with limited resources; (2) the continual evolution of telecommunications technology; and (3) the associated higher costs of serving rural communities. With the enactment of the Agricultural Act of 2014 (the 2014 Farm Bill), the Broadband Loan Program has been significantly modified, and was suspended while the Agency revised this regulation. Given that the program was unable to operate during the revision, the Agency published an interim rule on July 30, 2015 in the *Federal Register* (80 FR 45397) so that the program could immediately reopen. The Agency invited comments to guide its efforts in drafting the new procedures implementing the 2014 Farm Bill and received comments from the National Cable & Telecommunications Association, WTA-Advocates for Rural Broadband and Mr. James Cook. These comments and the Agency's responses are summarized as follows:

Broadband Service and Broadband Lending Speed Definitions

Comment: Respondents commented that the definitions for Broadband Service, which sets the eligibility standard for an area, and Broadband Lending Speed, which sets the

construction standard, are too low and should be raised to higher standards to be more in line with the current Federal Communications Commission (FCC) definition for broadband of 25 megabits downstream and 3 megabits upstream.

Response: As the respondents noted in their comments, the regulation establishes a process to change these definitions by publishing new requirements when a NOSA/NOFA is published opening up an application window. The Agency agrees that higher definitions would be beneficial to rural residents. However, when these definitions are set, it is not only the bandwidth requirement for rural areas that is considered but also the amount of funding that is available for any given application window. If a higher definition for bandwidth is used, more of the country then becomes eligible for funding. When limited funding is available, the Agency has to ensure that those funds are directed to the most unserved rural areas. The Agency will re-evaluate these requirements every time a NOSA/NOFA is published and set the standards accordingly.

Overbuilding

Comment: Respondents commented that the RUS investment should go into unserved areas and that the Agency count all terrestrial providers in the proposed service territory when determining area eligibility.

Response: RUS agrees that unserved areas should be the target of the program. To ensure that all terrestrial broadband providers are counted in an area where an application

is being considered, RUS has developed a multi-layer approach to locate them. First, when an application is submitted, the proposed service territory maps will be posted online utilizing the RUS Mapping Tool and existing service providers may respond to the public notice. If three or more existing providers are identified in the area and they meet the minimum eligibility speeds, then that area is considered ineligible for funding. If no providers respond to the public notice, then the Agency will have its field staff visit the proposed service area and locate all broadband providers in the area. The field staff will contact these providers and request that they respond to the public notice.

Area Eligibility

Comment: One respondent suggested that instead of three incumbents making a service area ineligible for funding, that the requirement be changed to two incumbents. The respondent also suggested that the definition of broadband service be raised to the current FCC definition for broadband of 25 megabits downstream and three megabits upstream.

Response: Although there is merit in using a higher bandwidth definition to determine area eligibility, the requirement that three incumbents in an area make that area ineligible is a statutory requirement and cannot be changed. The regulation does allow for the eligibility definition to be changed and the Agency will consider higher speeds whenever a NOSA/NOFA is published. As stated previously, the Agency must also recognize the amount of funding that is available each time an application window is opened and will set the eligibility definition accordingly.

Affordable Rates

Comment: One commenter reiterated that broadband service in rural areas needs to be affordable.

Response: Applicants must complete a market survey and a competitive analysis of all providers in the proposed service area as part of the application. This ensures that price points are set at the proper level for the area in question and that the operation is sustainable. There is a balance between providing high quality broadband service and charging the appropriate rate. It must be recognized that in less dense population areas, it may be necessary to charge a higher rate to ensure the viability of the operation.

Affiliated Companies

Comment: One commenter proposed that affiliate or affiliated companies providing broadband service in the same proposed funded service area should be recognized as one incumbent service provider when considering if an area is eligible for funding.

Response: Each company that is providing broadband service in an area and meets the definition of an incumbent service provider will be counted as an incumbent service provider in determining the eligibility of an area. RUS cannot treat legally established companies properly acting as independent companies as the same entity.

Broadband Usage Restrictions

Comment: One commenter recommended that if a company has capped the amount of bandwidth that is allowed for a given period, that additional standards should be established in determining if this provider would be counted as an incumbent service provider when determining service eligibility.

Response: The Agency appreciates this suggestion and will consider it during the next revision to the regulation. The main goal of the program is to provide funding to areas that do not have any broadband service. Most companies that cap bandwidth have options where a consumer can buy more bandwidth at an additional cost.

Wireless Broadband Service

Comment: One commenter recommended that wireless solutions for broadband service should be validated during busy hour/ busy time when determining if the wireless provider meets the definition for an incumbent service provide when determining area eligibility.

Response: There are many levels of providing broadband service and a number of ways for determining this. The Agency has elected to use advertised broadband rates that are being sold and to validate that this level of service is being provided in an area. We will

consider implementing additional tests the next time the regulation is revised. If tests of this nature are implemented for wireless service providers then corresponding tests will have to be implemented for wireline service providers.

The Agency appreciates the interest of the commenters and thanks them for their comment submissions.

The Rural Utilities Service did not receive any significant adverse comments during the public comment period on the interim rule, and therefore confirms the rule without change.

PART 1738 – RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES

Accordingly, the interim rule amending 7 CFR part 1738 which was published at 80 FR 45397 on July 30, 2015, is adopted as a final rule without change.

Dated: May 26, 2016.

Brandon McBride

Administrator, Rural Utilities Service

[FR Doc. 2016-13302 Filed: 6/8/2016 8:45 am; Publication Date: 6/9/2016]